

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

TRISHA WAKAT, as Administrator of §
the Estate of James Henry Mitchell, §
KATHY GUTIERREZ as Next Friend §
of §
AMBER MITCHELL, Minor Child of §
James Henry Mitchell, SHARON §
PATRICK, as Next Friend of §
JENNIFER §
MITCHELL and STACEY §
MITCHELL, §
Minor Children of James Henry §
Mitchell §

VS. §

MONTGOMERY COUNTY, TEXAS, §
the MONTGOMERY COUNTY, §
TEXAS §
SHERIFF'S DEPARTMENT, GUY §
LYNN WILLIAMS, as the Former §
Sheriff of Montgomery County, Texas, §
DR. UNAL KADRI GUROL, M.D., §
Individually and as the Medical §
Director/ §
Physician for the Inmates of the §
Montgomery County, Texas Jail, §
THOMAS WAYNE "TOMMY" GAGE, §
as the Current Sheriff of Montgomery §
County, Texas, JOHN DOE #1-10, and §
JANE DOE #1-10 §

UNITED STATES COURTS
SOUTHERN DISTRICT OF TEXAS
FILED

JAN 26 2006

MICHAEL N. MILBY, CLERK OF COURT

CIVIL ACTION NO. H-05-0978

Motion to Dismiss for Failure to File an Expert Report Under §74.351 of the
Texas Civil Practice & Remedies Code

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, UNAL KADRI GUROL, M.D., one of the Defendants in the above-entitled and numbered cause, and files this Motion to Dismiss for Failure to File an Expert Report under Chapter 74 of the Texas Civil Practice and Remedies Code § 74.351 and respectfully shows the Court as follows:

I.

Background

This case involves a number of health care liability claims that have been leveled against Defendant, Dr. Gurol. More specifically, Plaintiffs allege that Dr. Gurol failed to provide adequate medical care to the decedent in this matter. In all health care liability claims, the plaintiff, or his or her attorney shall, not later than the 120th day after the date the claim was filed, serve on each party an expert report with a curriculum vitae of each expert listed in the report. § 74.351(a), TEX. CIV. PRACT. & REM. CODE. The report must provide a fair summary of the expert's opinions regarding applicable standards of care, the manner in which the care rendered by the physician or health care provider failed to meet the standards, and the causal relationship between that failure and the injury, harm, or damages claimed. § 74.351(r)(6), TEX. CIV. PRACT. & REM. CODE.

Section 74.351 further provides that if the plaintiff fails to file the report within the time period specified, the Court, on the motion of the affected physician or healthcare provider, shall enter an order that:

1. Awards to the affected physician or health care provider reasonable attorney's fees and costs of court incurred by the physician or health care provider; and

2. Dismisses the claim with respect to the physician or health care provider, with prejudice to the refiling of the claim.

§ 74.351(b), TEX. CIV. PRACT. & REM. CODE.

II.

Plaintiff failed to comply with the Act

In this case, the Plaintiff's Original Petition was filed on March 22, 2005. The 120th day after suit was filed was July 20, 2005. Plaintiff has failed to comply with the Act as no expert report was ever filed in this lawsuit in compliance with §74.351 (a). As such, Plaintiff's action against Dr. Gurol must be dismissed.

III.

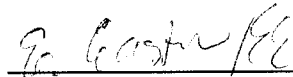
Dismissal is Mandatory

The dismissal of this action is mandatory. Accordingly, Dr. Gurol requests the Court to enter an Order dismissing the action against him and ordering Plaintiff to pay

Defendant his reasonable attorneys' fees and costs of Court.

WHEREFORE, PREMISES CONSIDERED, Defendant, UNAL KADRI GUROL, M.D., prays that this Honorable Court enter an order dismissing Plaintiffs' action against Dr. Gurol with prejudice, and to award any and all relief both at law or in equity to which Defendant Dr. Gurol may show himself to be justly entitled.

Respectfully submitted,



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Certificate of Service

I hereby certify that a true and correct copy of the foregoing instrument was served upon the parties listed below by facsimile, certified mail, return receipt requested, and/or by messenger on the 26th day of January, 2006.



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